

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MELVIN YU,

Petitioner,

No. CIV S-11-0110 JAM EFB (TEMP) P

vs.

GARY SWARTHOUT,

Respondent.

ORDER

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Petitioner is a state prisoner proceeding through counsel with an application for writ of habeas corpus under 28 U.S.C. § 2254. He challenges the Board of Parole Hearings' denial of his parole in 2009. On January 19, 2011, the court ordered respondent to file a response to the petition within sixty days. On January 24, the United States Supreme Court released its decision in *Cooke v. Swarthout*, \_\_\_ U.S. \_\_\_, 131 S.Ct. 859 (2011). The ruling in *Cooke* substantially affects the scope of federal courts' review of habeas petitions that challenge the denial of parole in California. Recognizing this effect, petitioner's counsel seeks leave to amend his claims in

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1 light of *Cooke*. Good cause appearing, the request will be granted.<sup>1</sup>

2 Accordingly, IT IS ORDERED that the motion to amend (Docket No. 12) is granted.  
3 Petitioner has thirty days from the date of this order in which to submit an amended petition.  
4 Petitioner may incorporate by reference any exhibits he deems necessary to the amended  
5 petition. The order for respondent to file a response to the petition (Docket No. 8) is vacated.

6 DATED: February 23, 2011.

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8 EDMUND F. BRENNAN  
9 UNITED STATES MAGISTRATE JUDGE  
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23 <sup>1</sup> Petitioner is apprised that the court is required to screen the amended petition pursuant  
24 to 28 U.S.C. § 1915A. Therefore, the instant order only grants petitioner leave to file an  
25 amended petition. The amended petition will not be operative until the court discharges its  
26 screening duty and orders respondent to answer or otherwise respond to the petition.  
Furthermore, petitioner's request that he be allowed to incorporate by reference the exhibits  
attached to his original petition will be allowed, but petitioner is apprised that any exhibits not  
incorporated in the amended complaint will no longer be part of his operative pleading, should  
the amended complaint be accepted into court.